

2005

Uintah Mountain RTC, LLC, a Utah limited liability company; D. Brad; John D. Hancock; Tyson B. Hancock; and Beau D. Hancock v. Duchesne County, a political subdivision of the State of Utah : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

UINTAH MOUNTAIN RTC, LLC,)
a Utah limited liability company;)
D. BRAD; JOHN D. HANCOCK;)
TYSON B. HANCOCK; and)
BEAU D. HANCOCK,)

Petitioners/Appellants,)

Case No. 20050053-CA

vs.)

DUCHESNE COUNTY, a political)
subdivision of the State of Utah,)

Respondent/Appellee.)

APPELLEE'S BRIEF

On Appeal from the Eighth Judicial District Court, Duchesne County
Case No. 040800030, Honorable John R. Anderson

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ORAL ARGUMENT REQUESTED

FILED
UTAH APPELLATE COURT

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	1
1. Nature of the Case	1
2. Course of Proceedings Below	2
3. Disposition in the District Court	3
STATEMENT OF FACTS	3
STANDARD OF REVIEW	7
ISSUES ON APPEAL	8
SUMMARY OF ARGUMENTS	8
ARGUMENTS	9
1. The decision of the Planning and Zoning Commission and the Duchesne County Commission to deny the Hancocks' request for up to fifty (50) clients was not arbitrary and capricious.....	9
2. The Duchesne County Commissions' reversal of the Planning Commissions' decision to grant the conditional use permit for ten (10) residents and thus denying the Hancocks a conditional use permit was not arbitrary and capricious.....	12
3. The actions of the Planning Commission and the County Commission in denying the conditional use permit to the Hancocks was not illegal under the Federal Fair Housing Act, 42 USC section 3601 et seq, and the Utah Fair Housing Act, UCA section 57-21-1 et seq.....	16
CONCLUSION	20

TABLE OF AUTHORITIES

Cases

Advocacy and Resource Center v. Town of Chazy, 62F. Supp 2d 686 (NDNY 1999)	17
Bryant Woods Inn Inc. v. Howard County, Maryland, 911 F. Supp. 918, 14 add 1039, 7 NDLR P422 (dmd Jan. 19, 1996)	17
Davis County v. Clearfield 756 P.2d 704 (Utah App. 1988)	8, 10, 14
National Bank of Boston v. County Board of Equalization, 799 P.2d 1163,1165 (Utah 1 1990).....	8, 9
Patterson v. Utah County Board of Adjustment, 893 P.2d 602 (Utah App. Mar 29, 1995)	7, 9
Oxford House Inc. v. the Town of Babylon, 819 F. Supp. 1179, 1186 (edny 1993)	17
Oxford House Inc. v. the Township of Cherry Hill, 799 F. Supp. 450, 456 (dnj 1992)	17, 18
Oxford House Inc. v. City of Albany, 819 F. Supp. 1168 (MDNY 1993)	18
Oxford House Inc. v. City of Virginia Beach, 825 F. Supp. 1251, E.D.Va., 1993	18
Smith and Lee Associates, Inc. v. City of Taylor, 13 F.2d 920, CA6 (MICH. 1993)	17
Wealth L. Wadsworth Construction, Inc. V. West Jordan City, 999 P.2d 1240 (Utah App. 2000)	14

Statutes

42 USC § 3601	8, 16
Duchesne County Code § 17.40.020	10
Duchesne County Code § 17.52.050	13
Duchesne County Code § 17.52.053	13
Utah Code § 57-21-1	8, 16
Utah Code § 17-27-708	7, 9
Utah Code § 78-2a-3(2)(b)	1

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to Utah Code § 78-2a-3(2)(b) because this case is an appeal from the district court review of the adjudicative proceedings of the Duchesne County Commission.

STATEMENT OF THE CASE

1. Nature of the Case

This matter is before this court on appeal by Appellants, UINTAH MOUNTAIN RTC, LLC, a Utah limited liability company; D. BRAD HANCOCK; TYSON B. HANCOCK; and BEAU D. HANCOCK, appealing the decision of the Honorable John R. Anderson in the Eighth Judicial District Court in and for Duchesne County, upholding the decision of the Duchesne County Planning Commission and the Duchesne County Commission, concerning a request for a conditional use permit to operate a residential treatment center for emotionally troubled teenage boys, on five acres located in the Hancock Cove area of Duchesne County; which is zoned A5. The A-5 zone has a 5 acre minimum, and is provided and designed to protect and encourage the continued use of land for agricultural purposes and to discourage the preemption of agricultural land for other uses. Other purposes of this district include the protection of the economic base of the county for such uses as forestry, oil and gas drilling, pipelines,

petroleum storage and distribution and the protection of significant natural features of land, creeks, lakes, wetlands, air and the preservation of open areas for wildlife habitat, and range livestock. This district is characterized by production farms and ranches including smaller hobby farms. Representative of the uses within this district is family dwellings, barns, corrals, crops, livestock raising, farm dwellings, dude ranches, produce retail sales, and petroleum drilling and storage. The use of the property proposed by the Hancocks is as a “residential treatment center” which is not a permitted use in this area. The Duchesne County zoning ordinance, however, does allow for certain conditional uses within this zone. The Hancocks’ request was for a conditional use permit for a residential treatment center to house emotionally troubled teenage boys.

2. Course of Proceedings Below

The Duchesne County Planning Commission held hearings on the Hancocks’ application in November and December of 2003, making a final determination to issue the conditional use permit, but limit the permit to ten (10) residents for the existing structure. This decision was appealed by the neighbors, who opposed the granting of the conditional use permit, and cross appealed by the Hancocks, who sought to increase the limit of residents up to fifty (50) residents. The appeals were to the Duchesne County Commission. A public hearing was held

on March 9, 2004 concerning the appeals. In a decision dated April 5, 2004 the Duchesne County Commission denied the Hancocks' cross appeal on the issue of the Planning Commission limiting the number of residents to ten (10), and reversed the decision of the Planning Commission which granted the conditional use permit for the ten (10) residents, thus denying the Hancocks' the conditional use permit.

3. Disposition in the District Court

The Hancocks filed a Petition for Review on May 4, 2004, seeking judicial review of the Duchesne County Planning Commission's decision and the decision of the Duchesne County Commission denying the Hancocks a conditional use permit. Oral argument was held on December 2, 2004 and the matter was taken under advisement. On December 21, 2004 the District Court issued its ruling affirming the county's decision and denying the Hancocks all relief.

STATEMENT OF RELEVANT FACTS

1. In September of 2003 the Hancocks made application to the Duchesne County Planning Commission for a conditional use permit to operate a residential treatment center for emotionally troubled teenage boys on five acres of land in Duchesne County, zoned as a A5 area.
2. The application that was submitted designated the nature of the request as a

conditional use to conduct a business, and the proposed use of land was agriculture, boarding school and treatment center. (ROP page 1)

3. Submitted along with the application was a diagram of a single family structure and the proposed renovations to the structure to accomplish its use as a residential treatment center. (ROP page 216.)

4. At no time were any drawings, maps, or plans presented that set forth how the Hancocks' were to house up to fifty (50) residents.

5. During the two public hearings the Planning Commission addressed questions to the Hancocks' as to the number of residents they intended on housing at the facility.

6. Various numbers of residents at the facility were given, ranging from ten, (ROP pages 158, 300-301), sixteen, the amount necessary to be financially viable, (ROP page 159) and fifty, the number of residents the Hancocks would eventually like to house in their residential treatment facility, (ROP page 158 and 159).

7. Neighbors expressed various concerns about the residential treatment center being in the area. (ROP pages 162-175, .

8. On December 3, 2003 the Planning Commission granted the conditional use permit for one building on the five acres, as set forth in the application, with the following conditions:

- 1) The location of the proposed use is compatible with other land uses in the general neighborhood.
- 2) The site is sufficient in size to accommodate the proposed use, together with all yards, open spaces, walls and fences, parking and loading facilities and landscaping as required by the ordinance.
- 3) The site shall be served by streets of sufficient capacity to carry the traffic generated by the proposed use, the proposed use if complies with all conditions of which approval is made contingent shall not adversely affect other property in the vicinity or the general welfare of the county.
- 4) Install an alarm system sufficient to control the clients.
- 5) They limit the clients to the ten clients, the state rules and regulations will allow.
- 6) They establish and conduct a monthly public relations meeting with the local community and give them an opportunity to give input and see what is going on.
- 7) They comply with all state, federal and local regulations pertinent to their business.
- 8) Provide proof of liability insurance.
- 9) They must comply with the operations as set forth in their written

proposal.

10) Provide definition of significant criminal background.

9. That decision was appealed by the neighbors and cross appealed by the Hancocks' to the Duchesne County Commission.

10. On March 9, 2004 Duchesne County Commission held the appeal hearing and took additional testimony concerning the Hancocks' application. (ROP pages 382-442).

11. On April 5, 2004 the Duchesne County Commission issued its decision on the appeal, affirming the Planning and Zoning Commissions denial of more than ten (10) residents, but also denied the Hancocks' request for a conditional use permit in its entirety. (ROP pages 539-545).

12. A summary of the decision is as follows:

1) The application was incomplete in regards to anything more than the existing structure.

2) The single structure could only house a maximum of ten (10) residents pursuant to State standards.

3) The conditional use permit for a maximum of ten (10) residents was not financially feasible.

13. The Hancocks' appealed that decision to the Eight Judicial District Court.

14. In a decision, the Honorable John R. Anderson, Judge in the Eighth Judicial District Court affirmed the County denial of the conditional use permit.

STANDARDS OF REVIEW

Decisions of a County Planning Commission and a County Commission, in regards to zoning issues, shall be upheld by the court unless the decision is arbitrary, capricious, or illegal. The standards of the courts review is the same as that established for the District Court in Section 17-27-708 UAC, 1953 as amended. Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah App. Mar 29, 1995). Section 17-27-708 UAC, 1953 as amended, provides in part.

§ 17-27-708. District court review of board of adjustment decision

(2)(a) The district court's review is limited to a determination of whether the board of adjustment's decision is arbitrary, capricious, or illegal.

(b) A determination of illegality requires a determination that the board of adjustment's decision violates a statute, ordinance, or existing law....

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

When addressing conditional use permits, a decision is arbitrary and capricious if it is not supported by substantial evidence in the record. Patterson v. Utah County Bd. of Adjustment, Supra. Substantial evidence is that “quantum and

quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion”. National Bank of Boston vs. County Board of Equalization, 799 P.2D 1163,1165 (Utah 1 1990), also Davis County vs. Clearfield 756 P.2D 704 (Utah app. 1988).

ISSUES ON APPEAL

Issues presented to the court on this appeal are as follows:

1. Was the decision of the Planning and Zoning Commission and the Duchesne County Commission to deny the Hancocks’ request for up to fifty (50) clients arbitrary and capricious?
2. Was the Duchesne County Commissions’ reversal of the Planning and Zoning Commissions’ decision to grant the Hancocks a conditional use permit for a maximum of ten (10) residents arbitrary and capricious?
3. Were the actions of the Planning Commission and the County Commission in denying the conditional use permit to the Hancocks illegal under the Federal Fair Housing Act, 42 USC section 3601 et, and the Utah Fair Housing Act, UCA Section 57-21-1 et seq.

SUMMARY OF ARGUMENTS

Duchesne County’s decision to deny the Hancocks a conditional use permit for a residential treatment center in an A5 zone was, 1. Not arbitrary and

capricious as it was based on, a) an incomplete application in regards to the proposed use above and beyond the single structure and the limit of ten (10) boys, b) a finding that the proposed use was not compatible with the area, and c) not financially feasible, and 2. Not illegal as it did not violate the Federal and Utah Fair Housing Acts.

ARGUMENTS

1. The decision of the Planning and Zoning Commission and the Duchesne County Commission to deny the Hancocks' request for up to fifty (50) clients was not arbitrary and capricious.

The Hancocks argue that the decision of the Planning Commission to limit the number of residents to ten (10) rather than allowing them to increase the residency up to fifty (50), and the actions on the part of Duchesne County Commission in upholding the Planning Commissions' decision was arbitrary and capricious. As set forth previously the Planning Commissions' and the County Commissions' decision is to be upheld, unless, from the evidence, such decision is arbitrary and capricious, § 17-27-708 UAC, 1953 as amended. To be arbitrary and capricious there must be a lack of substantial evidence to support such decision. Patterson v. Utah County Bd. of Adjustment, Supra. Substantial evidence is that "quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion". National Bank of Boston vs. County

Board of Equalization, Supra, also Davis County vs. Clearfield 756 P.2D 704 (Utah app. 1988).

The application that was submitted to the Planning Commission and subsequently to the Duchesne County Commission did not present any specific number of residents that would be treated at the residential treatment center. There was no evidence to support the number requested. The decision of the Duchesne County Commission was very clear on that point, they could not grant a conditional use permit for something that was not fully presented to them in the process. In the Duchesne County Decision on Appeal (ROP pages 539-544), the Commissioners stated:

“We have reviewed the application of the Hancocks and have concerns about the application being incomplete, particularly subsections (6), (7), (8), (9), (10), and (11) of Section 17.40.020 of the Duchesne County Code. These requirements were either not provided or were provided only for the single structure on five (5) acres. Subsection (7) of Section 17.40.020 of the Duchesne County Code specifically requires “a detailed written description of the anticipated ages and total number of occupants of the facility, together with a diagram of the facility including all separate rooms and the intended use of each room”. No diagram was submitted for any number greater than ten (10). It is obvious from the record that many things in the application were not complete, as questions had to be asked, and comments were made by the planning commission members, as to what was actually being proposed. It is clear that the Planning Commission granted the conditional use permit based on what they had in front of them at the time, and what the Hancocks stated was the maximum number of young men that could be housed in the existing structure. Even though there was

mention, in the record, of building another building on the five acre parcel, there was no diagram submitted for that structure or any future structures. The Planning Commission did not have an opportunity to fully evaluate anything other than the single structure on five acres, as that was all that was presented to them in the application. We are troubled by the lack of a detailed plan outlining the complete project, including a detailed description of the staff, numbers, evidence of compliance with required state and federal regulations, and statements from the appropriate regulatory agencies concerning availability of public utilities including culinary and irrigation water (including appropriate fire protection), power, sewage disposal and refuse disposal”.

The substantial evidence to support the Duchesne County Commissions’ decision is the lack of evidence on the part of the Hancocks to fully support their request for more than ten (10) residents. The only reference to the number of residents to be addressed in their proposal is found in the transcript of the hearing of November 3, 2003 before the Planning Commission (ROP pages 158-160). The discussion was regarding numbers of residents and the Hancocks mentioned numbers from 5 to 12 residents in the existing structure. There was also mention of the need for sixteen residents in the program for it to be financially viable, at one point the discussion turned to the number of fifty residents. The Hancocks themselves stated that could be a future concern, to be revisited. (ROP page 160). The final number of a maximum of ten (10) residents, was the maximum number under State rules and regulations, could be housed in the existing structure that was presented for consideration. (ROP page 301). The County Commission could not consider anything more than the existing structure and the number of residents allowed in that structure, under State rules and regulations, for the operation of

residential treatment centers. There was no plan submitted for more than the single structure with the ones that had a limit of ten (10) residents. The denial by the Planning Commission and the County Commission for a conditional use permit for more than ten (10) and up to fifty (50) residents was not arbitrary and capricious as there is substantial evidence from the record to support the decision to deny.

2. The Duchesne County Commissions' reversal of the Planning Commissions' decision to grant the conditional use permit for ten (10) residents and thus denying the Hancocks a conditional use permit was not arbitrary and capricious.

The Hancocks argue that the decision of the Duchesne County Commission to reverse the Planning Commission decision to grant a conditional use permit, for a maximum of ten (10) residents was arbitrary and capricious. Again we must look to the Decision on Appeal from the Duchesne County Commission. In the decision, the County Commissioners were concerned about the findings of the Planning Commission. In the decision they stated:

“We now look to conditions (1) and (4), location is compatible with other land uses in the general neighborhood, and the proposed use with conditions will not adversely affect other property in the vicinity or the general welfare of the county. It is clear from the submissions of the neighbors that the use in this area is single family dwellings on large lots with much open space. Developers in the Hancock Cove area have kept to this standard in the past twenty years and the zoning has been to encourage this type of use. The Planning Commission approved the modified single family residence on the five acres for the conditional use. This, we think, was in keeping with the character of the neighborhood. We are troubled, however, that even with this structure will the use be compatible with other

uses. This facility will need fences, parking, and attendant sheds and structures to house so many young men. The neighbors have also raised the issues of safety. No matter how you characterize it this is a facility for troubled youth, and troubled youth have their problems. There is evidence in the record that these types of facilities do have escapees and sometimes the escapees cause injury to persons and property. We see no evidence in the record that these issues have been addressed in a manner that will be compatible with the permitted uses in this area, or will not adversely affect other property in the vicinity.

The issues that must be addressed in the special minimum conditions also bring into question the finding of Section 17.52.050 (1) That the proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety or general welfare. The issues of safety, traffic and compatibility of either the single structure or the larger project were not adequately addressed”. (ROP page543-544)

Clearly the County Commission had trouble in supporting the findings of the Planning Commission that resulted in the Planning Commission granting the conditional use permit. The most troubling were the findings required in Section 17.52.053 of the Duchesne County Code, particularly subsections 1 and 4. They are as follows:

1. The location of the proposed use is compatible to other land uses in the general neighborhood.

...

4. The proposed use, if it complies with all conditions of which approval is made contingent, will not adversely effect other property in the

vicinity or the general welfare of the county.

The County Commission was concerned about the compatibility of the residential treatment center in the neighborhood, and any adverse effect it may have on the other property in the vicinity and the general welfare of the county. The County Commission denied the conditional use permit, finding that the residential treatment center was not compatible with the neighborhood and would adversely affect other property in the vicinity.

The Hancocks challenge these findings as not being supported by substantial evidence in the proceedings. They discount all of the neighbors concerns and their comments as mere “public clamor” and in support of their argument they site the cases of Davis County v Clearfield City, supra, Wealth L. Wadsworth Construction, Inc. v West Jordan City, 999 P.2d 1240 (Utah App.2000).

In Davis County v Clearfield City, supra, the court was concerned about the comments of the public that had no support. The public in that case made mere statements as to concerns about safety, the proposal being a nuisance and the devaluation of property. The court was clearly concerned that there was a lack of support of these allegations, that there were no opinions given by professional real estate appraisers or any credible evidence of reduced property values produced at the hearing. Furthermore, there is no support as to safety concerns, other than mere speculation.

In Wealth L. Wadsworth Construction, Inc. v West Jordan City, 999 P.2d 1240 (Utah App.2000), neighbors were opposed to a construction company’s application for a conditional use permit for outdoor storage of construction equipment. The court could not find sufficient evidence to support the mere speculation of the public’s comments. There was no showing that the use would be

a nuisance and there were no other areas in the neighborhood used for outdoor storage, similar to the construction company's.

In this case it is clear from the record that the residential treatment center and its effect on the neighborhood was of primary concern to the neighbors. Those concerns were: 1) safety of their children, 2) safety of their property, and 3) devaluation of their property. The neighbors comments at the public hearing are not public clamor. The County Commission clearly relied upon the neighbors' testimony to establish the character of the neighborhood. "It is clear from the submissions of the neighbors that the use in this area is single family dwellings on large lots with much open space. Developers in the Hancock Cove area have kept to this standard in the past twenty years and the zoning has been to encourage this type of use." (ROP page 543). The neighbors' concerns are supported by other evidence. Concern for devaluation of their property was supported by an appraisers report and a letter from a local realtor. (ROP pages 530-535, and 455-456). Concern for the safety was supported by testimony of victims who suffered injury or damage by residents from residential treatment centers, and by newspaper articles about escapees and criminal activity associated with residential treatment centers. (ROP pages 170,220-225,and 461-463). Concerns about this type of home located in close proximity of young children and a daycare center. (ROP pages 229-230). With this evidence the County Commission disagreed with the Planning Commission's decision to grant the conditional use permit, determining that the use was not compatible and would adversely effect other persons and property in the vicinity. The evidence submitted was substantial and adequate to convince a reasonable mind to support a conclusion that this type of facility was not compatible with this neighborhood and its existing land uses, and that allowing this use in this area would adversely effect other property in the

vicinity.

In addition to these concerns the County Commission was concerned about the financial viability of this residential treatment center, that by its nature was limited to ten (10) residents. The Hancocks themselves stated that there was a minimum of sixteen (16) residents needed in the program for it to be financially viable. (ROP pages 158-159). A conditional use permit will allow a non permitted use in a area, provided certain conditions are met. By its nature it is a departure from the prevailing zoning plans. If the use is not economically viable, there would be no point in allowing a non permitted use in an area when that use is not economically feasible. The Duchesne County Commission addressed that very issue in its decision when it stated: “ We are concerned that the number of ten (10) would not be sufficient to make the project financially feasible. In our opinion to approve a project that is not financially feasible is not good planning”.

The decision of the Duchesne County Commission reversing the Planning Commissions’ decision to grant a limited conditional use permit, denying the Hancocks a conditional use permit for a residential treatment center on the five (5) acres, was not arbitrary and capricious, as it was supported by sufficient evidence.

3. The actions of the Planning Commission and the County Commission in denying the conditional use permit to the Hancocks was not illegal under the Federal Fair Housing Act, 42 USC section 3601 et seq, and the Utah Fair Housing Act, UCA section 57-21-1 et seq.

The Hancocks claim the decision of the Duchesne County Commission to deny a conditional use permit for Uintah Mountain RTC was based on the familial status of the persons who will reside at the facility, and therefore, a violation of both the Federal Fair Housing Act, 42 USC section 3601 et seq, and the Utah Fair Housing Act, UCA Section 57-21-1 et seq, and as such was illegal. The Federal

Fair Housing Act and the Utah Fair Housing Act were enacted to prohibit discriminatory housing practices, and to allow individuals to obtain fair housing without discrimination. "Familial Status" is a category where discrimination is specifically prohibited. The Hancocks, in support of their argument, further cite the cases of Oxford House Inc. vs. The Town of Babylon, 819 F.Supp.1179,1186 (edny 1993) and Oxford House Inc. vs. Township of Cherry Hill, 799 F. Supp.450, 456 (dnj 1992). In Oxford House vs. The Town of Babylon, the issue concerned the removal of a group home for recovering alcoholics because it was not a single family dwelling, as the city's definition of a family did not include more than four unrelated persons. Other Federal Courts have declined to follow Oxford House vs. The Town of Babylon. In Bryant Woods Inn Inc. vs. Howard County, Maryland, 911 F. Supp.918, 14 add 1039, 7 NDLR P422 (dmd Jan. 19, 1996), the operator of a group home for elderly people with disabilities petitioned for a zoning exemption to house additional residents, denied when family dwelling was defined as no more than eight. See also, Smith and Lee Associates, Inc. vs. City of Taylor, 13 F.3D920, CA6 (MICH.)1993 (a for profit corporation that owns and operates adult foster care homes and 24 hour supervised care to dependent adults with limit of six elderly and disabled residents, denied request to increase number because of economic feasibility). Advocacy and Resource Center vs. Town of Chazy, 62F. Supp 2D 686 (NDNY 1999). (a non profit operator of community residents for people with development disabilities request to increase numbers under definition of family, denied).

In Oxford House vs. Township of Cherry Hill, a group home for recovering drug addicts and alcoholics, was granted a preliminary injunction preventing the Township from enforcing a zoning ordinance that interfered with their rental and occupancy of a group home located in a single family residential zone. In the

Cherry Hill zoning ordinance a single family dwelling defined as “collective body of persons doing their own cooking and living together upon the premises as a separate house keeping unit, in a domestic relationship based upon birth, marriage or other domestic bond.” The court found this to be a more stringent requirement on groups of unrelated individuals seeking to rent a single family home, than on groups who are related by blood and marriage. Other Federal Courts have declined to follow Oxford House Inc. vs. Township of Cherry Hill. In Oxford House Inc. vs. City of Virginia Beach, 825 F.Supp. 1251, E.D.Va.,1993, a non for profit corporation providing a recovery program for recovering alcohol and drug abusers. The city’s zoning ordinance requires operations of a group home nature, for more than four individuals, to be by conditional use permit. The Court declined to follow Oxford House Inc. vs Township of Cherry Hill and denied the requested injunctive relief. See also Oxford House Inc. Vs. City of Albany, 819 F. Supp. 1168 (MDNY 1993) (a non profit corporation operating group homes for persons recovering from alcohol and drug dependency, zoning ordinance prohibiting more than three unrelated persons from living together unless they were functionally equivalent of a traditional family, injunction denied).

The Hancocks’ argument that the acts of the Duchesne County Commission were illegal as a violation of both the Federal and Utah State Fair Housing Acts is misplaced. Nowhere in its zoning ordinance does Duchesne County limit the number of residents in a group home, or does it define the relationship which is

considered to be a “family”, by limiting the number or relationship of the individuals. The limitations on structures or the number of persons allowed in a single family dwelling, which is designated as a residential treatment center is governed by State law and State licensing requirements that strictly define the number of persons in the facility, based on square footage and supervision. There is no evidence in the record that the Planning Commission or the Duchesne County Commission used a standard based on relationship or family, or the number of unrelated persons in a home in making their decision.

The Hancocks also argue that the limit of ten (10) residents serves no legitimate purpose and is therefore illegal. The Duchesne County Zoning Ordinance does not establish any maximum number of residents who can be housed in a residential treatment center. That determination is established by state rules and regulations, setting forth the number of residents, based on square footage, and the number of people necessary for supervision. The Hancocks attempt to distance themselves from the state regulations by arguing that “the conditional use permit application had nothing to do with any particular structure” or rather how the land would be utilized. The compatibility with the neighborhood of a particular structure is clearly a part of the consideration. A structure by its nature is part of the equation when determining compatibility with

the neighborhood, especially when considering an area zoned for single family residential units. That is why the county ordinance requires plans that address buildings, parking, fences and other structures. The limit of ten (10) residents was a limit established by the state rules and regulations as it pertains to the one single family residential structure, that was part of the proposal. The purpose for the limit of ten (10) by the Planning Commission was that is what the State required, and the application to the Hanckocks proposed use was limited to the fact that there was only one structure submitted for the Planning Commission to consider. The position of a maximum of ten (10) residents in this structure on this five (5) acres was not illegal.

The application of Duchesne County's zoning ordinance does not violate the Federal or State Fair Housing Acts, the zoning ordinance only requires that group homes, as well as any other use which is not permitted in an A5 zone, obtain a conditional use permit. There is no violation of the Federal and State Fair Housing Acts, and the action of the Duchesne County Commission is not illegal.

CONCLUSION

This court may overrule the decisions of the Eighth District Court and the Duchesne County Commission denying the Hancocks a conditional use permit, to operate the Uintah Mountain Residential Treatment Center, only if the Duchesne

County Commissions' decision was arbitrary and capricious, or was illegal. There is no showing that Duchesne County acted in Violation of the Federal and State Fair Housing Acts or acted in any manner illegally. There is also substantial evidence in the record to convince a reasonable mind to support the decision to deny the Hancocks a conditional use permit to operate the Uintah Mountain Residential Treatment Center on the five acres in the Hancock Cove area. The decisions of the Eighth District Court and the Duchesne County Commission should be upheld.

Respectfully submitted,


A handwritten signature in cursive script, appearing to read "Roland Uresk", is written over a horizontal line.

Roland Uresk,
Attorney for Appellee
Duchesne County

CERTIFICATE OF SERVICE

Pursuant to U.R.A.P. 21(d), I hereby certify that I am an employee of Duchesne County and on the 12th day of July, 2005, I caused to be served a true and correct copy of the above and foregoing pleading by the method of U.S. Mail, addressed as follows:

Eric G. Easterly (8981)
1795 Sidewinder Drive, Suite 201
Park City, Utah 84060


Carrie Mascaro
Legal Assistant